## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO:

ALL CLASS ACTIONS RELATING TO TRACK TWO DEFENDANTS

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

# SECOND SUPPLEMENTAL DECLARATION OF DANIEL COGGESHALL REGARDING ESTIMATED NET CONSUMER SETTLEMENT FUND AND ESTIMATED CLASS 1 AND CLASS 3 CONSUMER PAYMENTS FOR THE TRACK TWO SETTLEMENT

The undersigned, Daniel Coggeshall, hereby states that:

- 1. At Class Counsel's request, I submit this Second Supplemental Declaration in order to provide the Court and the parties to the above-captioned litigation with additional information regarding Rust Consulting, Inc.'s estimate of the Net Consumer Settlement Fund and estimate for Class 1 and Class 3 Consumer Payments in the Track Two proposed settlement.
- 2. I am a Senior Project Administrator at Rust Consulting, Inc. ("Rust") f/k/a Complete Claim Solutions. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein, and if called as a witness, could and would testify competently hereto.

#### REDISTRIBUTING THE CONSUMER SETTLEMENT FUND

3. As previously stated in ¶¶ 3 and 4 of the Supplemental Declaration of Daniel Coggeshall Regarding Estimated Net Consumer Settlement Fund and Estimated Class 1 and Class 3 Consumer Payments for the Track Two Settlement dated August 3, 2011 (the "August")

Declaration"), previously filed with the Court, the Consumer Settlement Fund will be calculated as follows:

- \$3,125,000 of the gross amount of the TPP Settlement Fund will be added to the Consumer Settlement Fund for distribution to eligible Class 1 and Class 3 Consumers;
- the Gross Settlement Fund will be allocated as follows: 20% to Consumers and 80% to TPPs;
- the Consumers' portion of attorneys' fees will be reduced to 28% instead of the original 30%.
- 4. Rust estimates the Net Consumer Settlement Fund to be \$16,561,088.37, attached hereto as Exhibit A.
- 5. Class Counsel has requested Rust to calculate a third alternative "redistribution" scenario to determine how funds could be distributed to Class 1 and Class 3 Consumers.
- 6. The first alternative "redistribution" scenario is detailed in ¶ 14 of the Declaration of Daniel Coggeshall Regarding Estimated Net Consumer Settlement Fund and Estimated Class 1 and Class 3 Consumer Payments for the Track Two Settlement dated July 5, 2011 (the "July Declaration"), previously filed with the Court. Basically, this scenario provided for:
  - a) double damages for eligible Class 1 and Class 3 Group A drug administrations;
  - b) Class 3 Easy Refund of \$35 to be paid in full from the Group A Drug Fund prior to distributing funds for Group A purchases; and
  - c) Epogen purchases for Class 1 and Class 3 to receive a flat amount of \$53.28.

- 7. The second alternative "redistribution" scenario is detailed in ¶ 8 of the August Declaration. Basically, this scenario provided for:
  - a) double damages for Group A drug administrations;
  - b) Class 3 Easy Refund claimants receive full \$35 payment;
  - c) Class 1 claims with at least one (1) eligible Epogen purchase would receive a flat amount of \$5.00 and Class 3 claims with at least one (1) eligible Epogen purchase would receive a flat amount of \$50.00;
  - d) purchases of Group B drugs Leukine and Novantrone are not included after the end of 2002; and
  - e) total recognized loss for 'not otherwise classified' J-Code 3490 claims assumed to be \$500,000.
- 8. Rust retained the following assumptions from the second alternative "redistribution":
  - a) Class 3 Easy Refund claimants receive full \$35 payment;
  - b) Group B drug purchases are the total of the total co-payment obligation (without a multiplication factor);
  - c) purchases of Group B drugs Leukine and Novantrone are not included after the end of 2002; and
  - d) total recognized loss for 'not otherwise classified' J-Code 3490 claims assumed to be \$500,000.

and pursuant to Class Counsel's direction, Rust included the following additional assumptions for this third alternative "redistribution" scenario:

f) Claimants meeting the criteria that they were prescribed Epogen for non-dialysis would be moved from Group A to Group B since there are no damages. Rust is

- unable to determine who these claimants will be at this time and at Class Counsel's direction has assumed the total recognized loss for Epogen for Class 1 will be \$100,000 and for Class 3 will be \$5,000;
- g) total recognized loss Eligard for Class 1 assumed to be \$100,000 and Eligard purchases prior to April 1, 2002 are ineligible;
- h) total recognized loss Eligard for Class 3 assumed to be \$5,000; and
- i) Class 1 and Class 3 Consumers' Group A drugs would be calculated for double damages if purchased during the 'heartland period' (January 1, 1997 through December 31, 2003) and other Group A drugs would receive single damages
- 9. Under this redistribution scenario, Rust estimates:
  - a) Class 1 and Class 3 Consumers' "Total Recognized Loss" for Group A drugs to be approximately \$6,897,956.17 (100% payout); plus
  - b) Total Class 3 Easy Refund to be approximately \$452,541.25 (100% payout); plus
  - c) At this time, Rust estimates Total Group B "Recognized Losses" for both Class 1 and Class 3 to be approximately \$61,601,353.02. Rust divided the remaining Net Distributable Consumer Settlement Fund by Total Group B Recognized Losses and estimates a *pro rata* for Group B purchases to be approximately 14.952% (see Exhibit B). Note: this includes the assumptions for Epogen, Eligard and 'not otherwise classified' J-Code 3490.
- 10. There are approximately 55,092 claimants who had administrations of Epogen, Eligard or "not otherwise classified" J-Codes 3490 and 8999. In addition, under this redistribution proposal, an estimated 9,135 claimants who did not have administrations of Epogen, Eligard or

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"not otherwise classified" J-Codes 3490 and 8999 would receive an award amount less than

under the original Plan of Allocation.

11. Please note that these figures are also subject to change due to on-going claims

administration activities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge.

Executed this 19<sup>th</sup> day of August, 2011 in Palm Beach Gardens, Florida.

/s/ Daniel Coggeshall
Daniel Coggeshall

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# **EXHIBIT A**

#### PREPARED FOR:

Track 2 Consumer 8/2/2011

## **▲** Gross Settlement Fund and Interest

Gross Fund Amount	\$	125,000,000.00
Interest Amount		
Total Estimated Gross Fund	\$	125,000,000.00
Deductions		
Estimated Incentive Awards		25,000.00
Kinsella's Fees & Expenses		5,043,846.79
Rust's Fees & Expenses		3,429,790.04
Rust's Estimated Future Fees and Expenses		1,493,805.06
Bank Fees & Charges		
Dalik Fees & Charges		
Taxes Paid		
Estimated Taxes Withholding		
<b>Total Estimated Fund Deductions</b>		9,992,441.89
Estimated Net Distributable Fund		115,007,558.11
Consumer Fund Percentage		20.00%
Estimated Consumer Distributable Fund	8	23,001,511.62
Attorney's Fees (28% Consumer Portion)		6,440,423.25
<b>Estimated Net Consumer Distributable Fund</b>	\$	16,561,088.37

# **EXHIBIT B**

Track 2: Estimated Consumer Recognized Loss
Class 3: "Redistribution Scenario"

Bebulin

Class 3: "Redistribution Scenario"							
					Total Estimated Recognized Loss		
Drug	Class	Recognized Loss of Eligible Claims	Recognized Loss of Deficient Claim	Estimated Cure Rate (25%)	(RL + Eligible Cure Rate)	Estimated Net Settlement Fund	Estimated Pro rata
Anzemet (injection & tablets)	Α	\$ 108,011.94	\$ 10,572.42	\$ 2,643.11	\$ 110,655.05		
Aranesp	Α	\$ 45,114.93	\$ 8,832.90	\$ 2,208.23	\$ 47,323.15		
Ferrlecit	Α	\$ 11,137.66	\$ 16,709.54	\$ 4,177.38	\$ 15,315.04		
InFed	Α	\$ 17,644.57	\$ 959.65	\$ 239.91	\$ 17,884.48		
Neulasta	Α	\$ 39,625.44	\$ 3,033.37	\$ 758.34	\$ 40,383.79		
Neupogen	Α	\$ 17,332.13	\$ 1,431.84	\$ 357.96	\$ 17,690.09	l .	
Group 'A' Total		\$ 238,866.67	\$ 41,539.72	\$ 10,384.93	\$ 249,251.60	\$ 249,251.60	100.000000%
Easy Refund		\$ 418,180.00	\$ 137,445.00	\$ 34,361.25	\$ 452,541.25	\$ 452,541.25	100.000000%
Epogen					\$ 5,000.00		
Eligard					\$ 5,000.00		
Group B Drugs (without Eligard)		\$ 6,411,338.01	\$ 1,224,572.69	\$ 306,143.17	\$ 6,717,481.18		
Group B Total		\$ 6,411,338.01	\$ 1,224,572.69	\$ 306,143.17	\$ 6,727,481.18	\$ 1,005,888.2	14.951930%
Class 3 Total	-	\$ 7,068,384.68	\$ 1,403,557.41	\$ 350,889.35	\$ 7,429,274.03	\$ 1,707,681.10	22.985841%

396.54

396.54

					Total Estimated Recognized Loss		
Drug	Class	Recognized Loss of Eligible Claims	Recognized Loss of Deficient Claim	Estimated Cure Rate (25%)	(RL + Eligible Cure Rate)		
Anzemet (injection & tablets)	Α	\$ 3,104,883.01	\$ 1,043,002.53	\$ 260,750.63	\$ 3,365,633.64		
ranesp	Α	\$ 293,317.34	\$ 102,590.15	\$ 25,647.54	\$ 318,964.88		
errlecit	Α	\$ 1,828,393.12	\$ 435,079.42	\$ 108,769.86	\$ 1,937,162.98		
Fed	Α	\$ 819,994.57	\$ 202,967.36	\$ 50,741.84	\$ 870,736.41		
eulasta	Α	\$ 119,605.71	\$ 37,069.84	\$ 9,267.46	\$ 128,873.17		
eupogen	A	\$ 25,236.76	\$ 8,386.96	\$ 2,096.74	\$ 27,333.50	Estimated Net Settlement Fund	Estimated Pro rata
roup 'A' Total		\$ 6,191,430.51	\$ 1,829,096.26	\$ 457,274.07	\$ 6,648,704.58	\$ 6,648,704.58	100.000000
ccuNeb	В	\$ 918,255.46	\$ 226,468.62	\$ 56,617.16	\$ 974,872.62		
cetylcysteine	В	\$ 40,191.34	\$ 16,050.53	\$ 4,012.63	\$ 44,203.97		
yclovir sodium	В	\$ 827.14		\$ -	\$ 827.14		
denosine	В	\$ 328,592.56	\$ 96,895.03	\$ 24,223.76	\$ 352,816.32		
driamycin PFS/Adriamycin RFS	В	\$ 1,192,633.41	\$ 351,702.25	\$ 87,925.56	\$ 1,280,558.97		
frucil	В	\$ 84,640.95	\$ 28,703.20	\$ 7,175.80	\$ 91,816.75		
grastat	В	\$ 507.11	\$ 410.77	\$ 102.69	\$ 609.80		
outerol sulfate	В	\$ 97,726.17	\$ 24,522.07	\$ 6,130.52	\$ 103,856.69		
cohol injection <sup>1</sup>	В				\$ 500,000.00		
methapred	В	\$ 17,184.88	\$ 3,327.63	\$ 831.91	\$ 18,016.79		
ninocaproic acid	В	\$ 1.26	\$ 12.10	\$ 3.03	\$ 4.29		
mphocin / Amphotericin B	В	\$ 146,650.56	\$ 19,724.81	\$ 4,931.20	\$ 151,581.76		
ristocort	В	\$ 1,464.23	\$ 543.71	\$ 135.93	\$ 1,600.16		
istospan	В	\$ 2,765.17	\$ 789.88	\$ 197.47	\$ 2,962.64		
romasin	В	\$ 151,621.73	\$ 37,708.85	\$ 9,427.21	\$ 161,048.94		
tivan	В	\$ 13,158.60	\$ 4,693.95	\$ 1,173.49	\$ 14,332.09		
zmacort	В	\$ 570.76	\$ 126.33	\$ 31.58	\$ \$ 602.34		

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<b>-</b>	_			_		_		_	
Bioclate	В	\$	592,128.61		20.94		5.24		592,133.85
Brevibloc	В	\$	•		414.24		103.56		18,149.62
Buminate	B B	\$	197,128.02		45,225.28	\$	,		208,434.34
Calcijex		\$	• •		424,446.05	\$	106,111.51	\$	2,125,192.87
Calcimar	B B	\$	,		2,245.91	\$	561.48	\$	12,448.94
Camptosar / Irinotecan hydrochloride		\$	3,276,887.13		1,330,483.98	\$	332,621.00	\$	3,609,508.13
Carbocaine / Mepivicaine	B B	\$	632.86	\$	218.70	\$	54.68	\$	687.54
Cefizox		\$	818.41		451.70	\$	112.93		931.34
Cipro / Ciprofloxacin hydrochloride	В	\$	1,272.07	\$	204.11		51.03	\$	1,323.10
Cisplatin	В	\$	•		154,428.05	\$	38,607.01	\$	527,096.45
Claforan	В	\$	•		1,682.02		420.51		6,543.90
Cromolyn sodium	В	\$	6,899.49	\$	3,780.80	\$	945.20	\$	7,844.69
Cytosar-U / Cytarabine	В	\$	•		4,295.42	\$	1,073.86	\$	12,057.67
Depo provera	В	\$	•		943.08	\$			3,562.05
Depo-testosterone / Testosterone cypionate	В	\$	11,662.49		3,053.96	\$	763.49	\$	12,425.98
Dexamethasone acetate	В	\$	7,014.51		1,818.25	\$	454.56		7,469.07
Dexamethasone sodium\Dexamethasone sodium		\$	67,743.11		22,839.30	\$	5,709.83	\$	73,452.94
Dextrose\Dextrose sodium chloride\Ringers lacta		\$	•		34,403.09	\$	8,600.77		116,795.35
Diazepam	В	\$	1,105.35		729.66	\$			1,287.77
Dicarbazine (dtic-dome)	В	\$	-		9,301.00	\$	2,325.25	\$	36,428.72
Doxorubicin / Doxorubicin hydrochloride	В	\$	1,002,439.16	\$	320,264.35	\$	80,066.09	\$	1,082,505.25
Eligard	В							\$	100,000.00
Ellence / Epirubicin HCL	В	\$	547,818.28		126,781.57		31,695.39	\$	579,513.67
Enbrel	В	\$	7,538.07		6,044.18		1,511.05	\$	9,049.12
Epinephrine	В	\$	411.87	\$	94.44	\$	23.61	\$	435.48
Epogen	_							\$	100,000.00
Erythromycin / Erythromycin base	В	\$	1.82			\$	-	\$	1.82
Estradiol	В	\$	1,547.41		273.28	\$	68.32	\$	1,615.73
Etoposide	В	\$	•		155,544.61	\$	38,886.15	\$	473,137.53
Fentanyl citrate	В	\$	23,574.67		3,270.40	\$	817.60	\$	24,392.27
Fluphenazine HCL	В	\$	1,345.40		198.20	\$	49.55	\$	1,394.95
Furosemide	В	\$	•		697.49	\$	174.37	\$	2,591.01
Gamimune N	В	\$	4,152,455.81	\$	1,159,774.82	\$	289,943.71	\$	4,442,399.52
Gammagard /Gammagard S/D/ Iveegam	В	\$			282,405.87	\$	70,601.47	\$	1,116,443.05
Gentamicin sulfate	В	\$	21,355.73		5,349.58	\$	1,337.40	\$	22,693.13
Glycopyrrolate	В	\$			155.08	\$	38.77	\$	980.17
Heparin / Heparin lock flush / Heparin sodium	В	\$	78,530.78	\$	26,014.58	\$	6,503.65	\$	85,034.43
Humate-P	В	\$	30,961.32			\$	-	\$	30,961.32
Hydromorphine	В	\$	-		1,538.25	\$	384.56	\$	57,334.80
Idamycin / Idarubicin hydrochloride	В	\$	•		137.25	\$	34.31	\$	13,791.27
Ipratropium bromide	В	\$			319,425.75	\$	79,856.44	\$	1,227,651.78
Ketorolac / Ketorolac tromethamine	В	\$	26,166.11		4,880.57	\$	1,220.14	\$	27,386.25
Koate- HP	В	\$	- ,		0.70	\$	0.18	\$	544,175.25
Leucovorin calcium <sup>2</sup>	В	\$			412,430.69	\$	103,107.67	\$	1,182,186.88
Leukine	В	\$	•		212,021.49	\$	53,005.37	\$	639,462.98
Levofloxacin	В	\$	20,479.52	- 1	5,820.13		1,455.03	\$	21,934.55
Lidocaine hydrochloride	В	\$	·		1,357.67	\$	339.42	\$	6,203.26
Liposyn II / Fat emulsion	В	\$	172,135.22		32,708.70	\$	8,177.18	\$	180,312.40
Lovenox	В	\$	42,536.39		10,726.42	\$	2,681.61	\$	45,218.00
Lyphocin	В	\$	197,102.20		47,203.97		11,800.99	\$	208,903.19
Magnesium sulfate	В	\$	7,247.01		1,003.52		250.88	\$	7,497.89
Mannitol Madral / Mathulare daise leas	B B	\$ \$	· · · · · · · · · · · · · · · · · · ·	\$	2,303.97	\$	575.99	\$	6,781.42
Medrol / Methylprednisolone	В	\$	1,955.64	Þ	335.73	Ş	83.93	Þ	2,039.57

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Consumer Class Total		\$	64,077,634.56	\$ 16,656,863.53	\$ 4,164,215.88	\$	68,951,850.44	\$	16,561,088.37		24.018338%
Class 1 Total		\$	57,009,249.88	\$ 15,253,306.12	\$ 3,813,326.53	\$	61,522,576.41	\$	14,853,407.27		24.143019%
Group B Total		\$	50,817,819.37	13,424,209.86	3,356,052.47	_	54,873,871.84		8,204,702.69		14.951930%
Zemplar	В	\$	16,180,855.28	\$ 3,735,586.07	\$ 933,896.52	\$	17,114,751.80	<b>Estimated Net Settlement</b>	Fund	Estimated Pro	rata
Vincasar / Vincristine / Vinscristine sulfate	В	\$	162,850.70	\$ 49,231.75	\$ 12,307.94	\$	175,158.64				
Vinblastine sulfate	В	\$	17,721.93	\$ 6,451.88	\$ 1,612.97	\$	19,334.90				
Trelstar / Triptorelin pamoate	В	\$	3,823.42	\$ 249.14	\$ 62.29	\$	3,885.71				
Travasol / Travasol with dextrose	В	\$	1,245,982.70	\$ 289,628.04	\$ 72,407.01	\$	1,318,389.71				
Tobramycin sulfate / Tobramycin/sodium chloride	В	\$	15,465.60	\$ 3,957.80	\$ 989.45	\$	16,455.05				
Thioplex / Thiotepa	В	\$	23,053.31	\$ 1,930.49	\$ 482.62	\$	23,535.93				
Taxotere	В	\$	5,945,327.56	\$ 2,016,283.87	\$ 504,070.97	\$	6,449,398.53				
Succinylcholine chloride	В	\$	155.84	\$ 112.01	\$ 28.00	\$	183.84				
Solu-cortef / Hydrocortisone sodium succinate	В	\$	1,885.37	\$ 525.49	\$ 131.37	\$	2,016.74				
Sodium chloride	В	\$	633,553.95	\$ 200,910.65	\$ 50,227.66	\$	683,781.61				
Ranitidine HCL	В	\$	7,359.79	\$ 2,218.27	\$ 554.57	\$	7,914.36				
Propranolol HCL	В	\$	41.80	\$ 16.35	\$ 4.09	\$	45.89				
Promethazine (HCL is only version)	В	\$	14,791.62	\$ 3,989.46	\$ 997.37	\$	15,788.99				
Prograf	В	\$	4,448,775.90	\$ 828,940.35	\$ 207,235.09	\$	4,656,010.99				
Potassium chloride	В	\$	2,494.96	\$ 902.34	\$ 225.59	\$	2,720.55				
Phenylephrine	В	\$	37.89	\$ 7.41	\$ 1.85	\$	39.74				
Perphenazine	В	\$	0.24	\$ 0.96	\$ 0.24	\$	0.48				
Novantrone	В	\$	511,510.26	\$ 167,473.95	\$ 41,868.49	\$	553,378.75				
Neostigmine methylsulfate	В	\$	346.91	\$ 59.66	\$ 14.92	\$	361.83				
Neosar / Cyclophospamide	В	\$	265,738.99	\$ 79,239.34	\$ 19,809.84	\$	285,548.83				
Nebupent	В	\$	2,730.66	\$ 1,012.36	\$ 253.09	\$	2,983.75				
Nalbuphine	В	\$	2,651.40	\$ 336.58	\$ 84.15	\$	2,735.55				
Morphine sulfate	В	\$	117,926.94	\$ 19,289.77	\$ 4,822.44	\$	122,749.38				
Mononine	В	\$	19,077.12		\$ -	\$	19,077.12				
Mithracin	В	\$	115.74	\$ 116.66	\$ 29.17	\$	144.91				
Midazolam hydrochloride	В	\$	4,760.23	\$ 1,333.37	\$ 333.34	\$	5,093.57				
Metoclopramide	В	\$	3,892.60	\$ 1,033.64	\$ 258.41	\$	4,151.01				
Methotrexate sodium	В	\$	21,110.84	\$ 5,034.80	\$ 1,258.70	\$	22,369.54				
Metaproterenol sulfate	В	Ş	43,726.94	\$ 16,908.87	\$ 4,227.22	\$	47,954.16				

<sup>&</sup>lt;sup>1</sup>CMS uses the J-Code J3490 which is "not otherwise classified." This code is used to refer to drugs outside of this Settlement as well as the following drugs within the Settlement: Alcohol injection, Bupivacaine, Copper trace / Cupric chloride, Diltiazem hydrochloride, Enalaprilat, Kineret, Labetalol, Manganese chloride, Novacaine / Procaine, Pancuronium bromide, Potassium acetate, Propofol, Sodium acetate, Verapamil HCL, and Zinc chloride.

<sup>&</sup>lt;sup>2</sup>CMS uses the J-Code J8999 which is "not otherwise classified." This code is used to refer to drugs outside of this Settlement as well as Leucovorin calcium, a drug within the Settlement. J0640 is also used to for Leucovorin calcium and is "classified."

#### **CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on August 19, 2011, I caused copies of *Second Supplemental Declaration of Daniel Coggeshall Regarding Estimated Net Consumer Settlement Fund and Estimated Class 1 and Class 3 Consumer Payments for the Track Two Settlement*, to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman Steve W. Berman